

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

ASSOCIATION OF CITIZENS CONCERNED
ABOUT CHAMBERS LAKE BASIN, SAVE
L.B.A. FOREST AND TRAILS, EMILIE M.
CASE, JOHN CUSICK, BRIAN FALLER,
CRISTIANA FIGUEROA-KAMINSKY, LOU
GUETHLEIN, GEORGE GUETHLEIN, STEVE
MOORE, ERIC NELSON, DENNIS O'HARE,
RHONDA OLNICK, DANIEL PERRY, AND
JANE STAVISH,

Petitioners,

v.

CITY OF OLYMPIA,

Respondent,

and,

SSHI LLC dba DR HORTON,

Intervenor.

Case No. 13-2-0014

FINAL DECISION AND ORDER

SYNOPSIS

Petitioners challenged the City of Olympia's downzone of 80 acres from Neighborhood Village to Residential 4-8. Petitioners asserted the City's action was based on an inadequate environmental analysis thereby violating the State Environmental Policy Act (SEPA) as well as the Growth Management Act's (GMA) requirements for internal consistency. The Board found the City adequately evaluated environmental impacts of the proposed non-project rezone, including alternatives and cumulative impacts. The Board found the City's environmental impact statement correctly addressed the need for more detailed environmental analysis when a site-specific proposal is submitted to the City.

1 Lastly, the Board did not find the City's action violated GMA goals nor found inconsistencies
2 between the rezone and comprehensive plan.

3 4 **PROCEDURAL BACKGROUND**

5 **Petition for Review**

6 Petitioners Association of Citizens Concerned About Chambers Lake Basin, Save
7 L.B.A. Forest and Trails, Emilie M. Case, John Cusick, Brian Faller, Cristiana Figueroa-
8 Kaminsky, Lou Guethlein, George Guethlein, Steve Moore, Eric Nelson, Dennis O'Hare,
9 Rhonda Olnick, Daniel Perry, and Jane Stavish (Citizens) filed an original and an amended
10 Petition for Review (PFR).¹ SSHI LLC, a Delaware limited liability company, dba DR Horton
11 (Intervenor) requested and was granted Intervenor status.²

12
13 The PFR challenges the City of Olympia's (the City) adoption of Ordinance No. 6824
14 (the Ordinance) which amended the Comprehensive Plan, the Olympia Zoning Map and the
15 Olympia Future Land Use Map and changed the zoning from Neighborhood Village to
16 Residential 4-8 units per acre together with the accompanying Final Supplemental
17 Environmental Impact Statement (FSEIS). The property is known as the Trillium Property
18 and is an 80 acre parcel located within the City of Olympia; unincorporated Thurston County
19 is to the south zoned at Residential 4-8. In 1994, the Trillium Property was zoned as
20 Neighborhood Village with density of 7-13 units per acre and commercial areas. The PFR
21 asserts the City's environmental analysis was inadequate thereby violating the State
22 Environmental Policy Act and Growth Management Act.³

23 24 25 **PRELIMINARY MATTERS**

26 **Abandoned Issues**

27 Petitioners abandoned Issue #2 in their Prehearing Brief.⁴

28 **Issue # 2 -- Abandoned**

29 Did the City of Olympia violate, inter alia, WAC 197-11-060(2)(a), (4), (5)(d),
30 WAC 197-11-055(2)(c), WAC 197-11-400, WAC 197-11-420, WAC 197-11-
31

32 ¹ Petition for Review filed February 11, 2013, and Amended Petition for Review filed on March 12, 2013.

² Prehearing Order, March 20, 2013.

³ Amended Petition for Review at 5.

⁴ Petitioners' Prehearing Brief at 9.

1 440, and WAC 197-11-620 by phasing environmental review such that
2 analysis of known or probable flooding, erosion, and pollution impacts was
3 deferred to a point in the future when the City would lack meaningful
4 authority to identify and mitigate those impacts?

5 **Motions**

6 *Motion to Dismiss*

7 Intervenor⁵ requested dismissal of Issue 1 through and including Issue 5 based on a
8 failure to demonstrate SEPA standing by Petitioners. Intervenor argued Petitioners could
9 not satisfy the two-part SEPA standing test: having an interest within the zone of interests
10 protected by SEPA and injury-in-fact.⁶ Intervenor also argued Petitioners' SEPA issues
11 should be dismissed as they failed to exhaust available administrative remedies. Petitioners
12 filed a timely response.⁷ The Board denied Intervenor's Motion to Dismiss based on SEPA
13 standing. The Board deferred ruling on the Motion to Dismiss based on a failure to exhaust
14 administrative remedies.⁸ Intervenor subsequently abandoned its Motion in their Prehearing
15 Brief.⁹

16
17
18 *Motion to Supplement*

19 Petitioners filed two Motions to Supplement requesting that the record be
20 supplemented with declarations from Mark Biever and to add an extensive list of items to
21 the record.¹⁰ The City and Intervenor objected to both motions stating the Petitioners had
22 made conclusory statements about why the information would help the Board. The Board
23 admitted Petitioner SEPA comments # 500, Exhibits 500.8 and 601, but did not admit the
24 remaining exhibits requested by Petitioners.¹¹
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29 ⁵ Dispositive Motion to Dismiss Legal Issues 1-5, filed April 8, 2013.

30 ⁶ *Id.* at 3

31 ⁷ Petitioners' Joint Response to Intervenor's Dispositive Motion to Dismiss Legal Issues 1-5, filed April 18,
2013.

32 ⁸ Order on Dispositive Motion, Case No. 13-2-0014, April 26, 2013, at 5.

⁹ Intervenor DR Horton's Prehearing Brief at 15

¹⁰ Petitioners' First Motion to Supplement the Record and Petitioners' Second Motion to Supplement the
Record, filed April 8, 2013.

¹¹ Order on Motions to Supplement, Case No. 13-2-0014, April 26, 2013.

1 *Motion on Supplemental Briefing*

2 Petitioners sent the Board correspondence which did not comport with the Board's
3 schedule or briefing requirements. Both City and Intervenor objected. Under WAC 242-03-
4 800, the Board denied the supplemental briefing.¹²

6 **PRESUMPTION OF VALIDITY, BURDEN OF PROOF,
7 AND STANDARD OF REVIEW**

8 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations,
9 and amendments to them, are presumed valid upon adoption.¹³ This presumption creates
10 a high threshold for challengers as the burden is on the Petitioners to demonstrate that any
11 action taken by the City is not in compliance with the GMA.¹⁴

12 The Board is charged with adjudicating GMA compliance and, when necessary,
13 invalidating noncompliant plans and development regulations.¹⁵ The scope of the Board's
14 review is limited to determining whether the City has achieved compliance with the GMA
15 only with respect to those issues presented in a timely petition for review.¹⁶ The GMA
16 directs that the Board, after full consideration of the petition, shall determine whether there
17 is compliance with the requirements of the GMA.¹⁷ The Board shall find compliance unless
18 it determines the City's action is clearly erroneous in view of the entire record before the
19 Board and in light of the goals and requirements of the GMA.¹⁸ In order to find the City's
20 action clearly erroneous, the Board must be "left with the firm and definite conviction that a
21 mistake has been committed."¹⁹

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27 ¹² Order Striking Supplemental Briefing, Case No. 13-2-0014, July 10, 2013.

28 ¹³ RCW 36.70A.320(1) provides: [Except for the shoreline element of a comprehensive plan and applicable
29 development regulations] "comprehensive plans and development regulations, and amendments thereto,
30 adopted under this chapter are presumed valid upon adoption."

31 ¹⁴ RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity] "the
32 burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this
chapter is not in compliance with the requirements of this chapter."

¹⁵ RCW 36.70A.280, RCW 36.70A.302.

¹⁶ RCW 36.70A.290(1).

¹⁷ RCW 36.70A.320(3).

¹⁸ RCW 36.70A.320(3).

¹⁹ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008)(Citing *Dept. of Ecology v. PUD
District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe v.*

1 In reviewing the planning decisions of cities and counties, the Board is instructed to
2 recognize "the broad range of discretion that may be exercised by counties and cities" and
3 to "grant deference to counties and cities in how they plan for growth." ²⁰

4 Thus, the burden is on the Petitioners to overcome the presumption of validity and
5 demonstrate the challenged action taken by the City is clearly erroneous in light of the goals
6 and requirements of the GMA.
7

8 **BOARD JURISDICTION**

9 The Board finds the Petition for Review was timely filed, pursuant to RCW 36.70A.
10 290(2). The Board finds the Petitioners have standing to appear before the Board, pursuant
11 to RCW 36.70A.280(2). The Board finds it has jurisdiction over the subject matter of the
12 petition pursuant to RCW 36.70A.280(1).
13

14 **ISSUES AND DISCUSSION**

15 Petitioners brought the remaining seven issues to the Board for review. These
16 issues involve primarily the State Environmental Policy Act (chapter 43.21C RCW) and
17 partially the Growth Management Act (RCW 36.70A). Petitioners Prehearing Brief
18 combined Issues 1-5 into their first section, followed by a separate section addressing
19 Issues 6, 7, and 8. The Board reviews and discusses these issues below.
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21

22 Issue 1

23 Did the City of Olympia violate, inter alia, RCW 43.21C.030(c), (e), RCW
24 43.21C.031(2), WAC 197-11-060(4),(5)(a),(b),(d),(g), WAC 197-11-400(2),
25 WAC 197-11-402, and WAC 197-11-560(1)(e) when it relied on an
26 environmental checklist and SEIS that did not fully disclose, discuss,
27

28 *WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488, 497-
29 98, 139 P.3d 1096 (2006).

30 ²⁰ RCW 36.70A.3201 provides, in relevant part: "In recognition of the broad range of discretion that may be
31 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the
32 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements
and goals of this chapter. Local comprehensive plans and development regulations require counties and cities
to balance priorities and options for action in full consideration of local circumstances. The legislature finds that
while this chapter requires local planning to take place within a framework of state goals and requirements, the
ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and
implementing a county's or city's future rests with that community."

1 consider, or analyze known or probable flooding, erosion, and pollution
2 impacts of the action on Chamber's Ditch and Creek, the Wiggins Road
3 ditch, and surrounding critical areas?

4 Issue 3

5 Did the City of Olympia violate, inter alia, WAC 197-11-060(4) by failing to
6 assess the flooding, erosion, and pollution impacts of maximum potential
7 development of the site?

8 Issue 4

9
10 Did the City of Olympia violate, inter alia, WAC 197-11-060(4), WAC 197-11-
11 238, WAC 197-11-440(5)(c)(i), (v), and (vi) by failing to assess cumulative
12 flooding, erosion, and pollution impacts associated with the proposal?

13 Issue 5

14 Did the City of Olympia violate, inter alia, RCW 43.21C.031(2) and WAC 197-
15 11-440(5) by failing to mitigate known or probable flooding, erosion, and
16 pollution impacts?

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18 Applicable Laws

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20 **RCW 43.21C.030(c) and (e) SEPA Guidelines for state agencies**

21 (c) Include in every recommendation or report on proposals for legislation
22 and other major actions significantly affecting the quality of the environment,
23 a detailed statement by the responsible official on:

- 24 (i) the environmental impact of the proposed action;
25 (ii) any adverse environmental effects which cannot be avoided should the
26 proposal be implemented;
27 (iii) alternatives to the proposed action;
28 (iv) the relationship between local short-term uses of the environment and
29 the maintenance and enhancement of long-term productivity; and
30 (v) any irreversible and irretrievable commitments of resources which
31 would be involved in the proposed action should it be implemented;

32 ...

(e) Study, develop, and describe appropriate alternatives to recommended
courses of action in any proposal which involves unresolved conflicts
concerning alternative uses of available resources;

1 **RCW 43.21C.031(2) Significant impacts.**

2 (2) An environmental impact statement is required to analyze only those
3 probable adverse environmental impacts which are significant. Beneficial
4 environmental impacts may be discussed. The responsible official shall
5 consult with agencies and the public to identify such impacts and limit the
6 scope of an environmental impact statement. The subjects listed in RCW
7 43.21C.030(2)(c) need not be treated as separate sections of an
8 environmental impact statement. Discussions of significant short-term and
9 long-term environmental impacts, significant irrevocable commitments of
10 natural resources, significant alternatives including mitigation measures, and
11 significant environmental impacts which cannot be mitigated should be
12 consolidated or included, as applicable, in those sections of an
13 environmental impact statement where the responsible official decides they
14 logically belong.

13 **WAC 197-11-060 Content of environmental review.**

14 **(4) Impacts.**

15 (a) SEPA's procedural provisions require the consideration of
16 "environmental" impacts (see definition of "environment" in WAC 197-11-740
17 and of "impacts" in WAC 197-11-752), with attention to impacts that are
18 likely, not merely speculative. (See definition of "probable" in WAC 197-11-
19 782 and 197-11-080 on incomplete or unavailable information.)

20 (b) In assessing the significance of an impact, a lead agency shall not limit its
21 consideration of a proposal's impacts only to those aspects within its
22 jurisdiction, including local or state boundaries (see WAC 197-11-330(3)
23 also).

24 (c) Agencies shall carefully consider the range of probable impacts, including
25 short-term and long-term effects. Impacts shall include those that are likely to
26 arise or exist over the lifetime of a **proposal** or, depending on the particular
27 proposal, longer. (emphasis added)

28 (d) A proposal's effects include direct and indirect impacts caused by a
29 proposal. Impacts include those effects resulting from growth caused by a
30 proposal, as well as the likelihood that the present proposal will serve as a
31 precedent for future actions. For example, adoption of a zoning ordinance will
32 encourage or tend to cause particular types of projects or extension of sewer
lines would tend to encourage development in previously unsewered areas.

(e) The range of impacts to be analyzed in an EIS (direct, indirect, and
cumulative impacts, WAC 197-11-792) may be wider than the impacts for
which mitigation measures are required of applicants (WAC 197-11-660).
This will depend upon the specific impacts, the extent to which the adverse
impacts are attributable to the applicant's proposal, and the capability of
applicants or agencies to control the impacts in each situation.

1 (5) **Phased review.**

2 (a) **Lead agencies shall determine the appropriate scope and level of**
3 **detail of environmental review to coincide with meaningful points in**
4 **their planning and decision-making processes.** (See WAC 197-11-055 on
5 timing of environmental review.) (emphasis added)

6 (b) Environmental review may be phased. If used, phased review assists
7 agencies and the public to focus on issues that are ready for decision and
8 exclude from consideration issues already decided or not yet ready. **Broader**
9 **environmental documents may be followed by narrower documents, for**
10 **example, that incorporate prior general discussion by reference and**
11 **concentrate solely on the issues specific to that phase of the proposal.**
12 (emphasis added)

13 ...

14 (d) Phased review is not appropriate when:

15 (i) The sequence is from a narrow project document to a broad policy
16 document;

17 (ii) It would merely divide a larger system into exempted fragments or avoid
18 discussion of cumulative impacts; or

19 (iii) It would segment and avoid present consideration of proposals and their
20 impacts that are required to be evaluated in a single environmental document
21 under WAC 197-11-060 (3)(b) or 197-11-305(1); however, the level of detail
22 and type of environmental review may vary with the nature and timing of
23 proposals and their component parts.

24 ...

25 (g) Where proposals are related to a large existing or planned network, such
26 as highways, streets, pipelines, or utility lines or systems, the lead agency
27 may analyze in detail the overall network as the present proposal or may
28 select some of the future elements for present detailed consideration. Any
29 phased review shall be logical in relation to the design of the overall system
30 or network, and shall be consistent with this section and WAC 197-11-070.

31 **WAC 197-11-210 SEPA/GMA Integration**

32 (1) The purpose of WAC 197-11-210 through 197-11-235 is to authorize
GMA counties/cities to integrate the requirements of SEPA and the Growth
Management Act (GMA) to ensure that environmental analyses under SEPA
can occur concurrently with and as an integral part of the planning and
decision making under GMA. Nothing in these sections is intended to
jeopardize the adequacy or require the revision of any SEPA or GMA
processes, analyses or document deadlines specified in GMA.

(2) GMA counties/cities may use the procedures of these rules to satisfy the
requirements of SEPA for GMA actions. Other jurisdictions planning under
GMA may also use these integration procedures.

1 **(3) Environmental analysis at each stage of the GMA planning process**
2 **should, at a minimum, address the environmental impacts associated**
3 **with planning decisions at that stage of the planning process. Impacts**
4 **associated with later planning stages may also be addressed.**

5 Environmental analysis that analyzes environmental impacts in the GMA
6 planning process can:

7 (a) Result in better-informed GMA planning decisions;
8 (b) Avoid delays, duplication and paperwork in project-level environmental
9 analysis; and

10 **(c) Narrow the scope of environmental review and mitigation under**
11 **SEPA at the project level.** (emphasis added)

12 **WAC 197-11-238 Monitoring**

13 Monitoring information is important to maintain the usefulness of the
14 environmental analysis in plans and development regulations for project-level
15 review and to update plans under chapter 36.70A RCW. GMA counties/cities
16 are encouraged to establish a process for monitoring the cumulative impacts
17 of permit decisions and conditions, and to **use that** data to update the
18 information about existing conditions for the built and natural environment. If
19 a monitoring process is developed, it should be established at the time
20 information on existing conditions is developed. Annual or periodic reports
21 summarizing the data and documenting trends are encouraged.

22 **WAC 197-11-400 Purpose of EIS**

23 (2) An EIS shall provide impartial discussion of significant environmental
24 impacts and shall inform decision makers and the public of reasonable
25 alternatives, including mitigation measures that would avoid or minimize
26 adverse impacts or enhance environmental quality.

27 **WAC 197-11-402 General requirements**

28 Agencies shall prepare environmental impact statements as follows:

29 (1) EISs need analyze only the reasonable alternatives and probable adverse
30 environmental impacts that are significant. Beneficial environmental impacts
31 or other impacts may be discussed.

32 (2) The level of detail shall be commensurate with the importance of the
impact, with less important material summarized, consolidated, or
referenced.

(3) Discussion of insignificant impacts is not required; if included, such
discussion shall be brief and limited to summarizing impacts or noting why
more study is not warranted.

1 (4) **Description of the existing environment and the nature of**
2 **environmental impacts shall be limited to the affected environment** and
3 shall be no longer than is necessary to understand the environmental
4 consequences of the alternatives, including the proposal. (emphasis added)

5 ...

6 (8) Agencies shall prepare EISs concurrently with and coordinated with
7 environmental studies and related surveys that may be required for the
8 proposal under other laws, when feasible.

9 (9) The range of alternative courses of action discussed in EISs shall
10 encompass those to be considered by the decision maker.

11 (10) EISs shall serve as the means of assessing the environmental impact of
12 proposed agency action, rather than justifying decisions already made.

13 **WAC 197-11-440 EIS Contents**

14 (5) **Alternatives including the proposed action.**

15 ...

16 (c) This section of the EIS shall:

17 (i) Describe the objective(s), proponent(s), and principal features of
18 reasonable alternatives. Include the proposed action, including mitigation
19 measures that are part of the proposal.

20 . . .

21 (v) **Devote sufficiently detailed analysis to each reasonable alternative**
22 **to permit a comparative evaluation of the alternatives including the**
23 **proposed action.** The amount of space devoted to each alternative may
24 vary. One alternative (including the proposed action) may be used as a
25 benchmark for comparing alternatives. The EIS may indicate the main
26 reasons for eliminating alternatives from detailed study.

27 (vi) Present a comparison of the environmental impacts of the reasonable
28 alternatives, and include the no action alternative. Although graphics may be
29 helpful, a matrix or chart is not required. **A range of alternatives or a few**
30 **representative alternatives, rather than every possible reasonable**
31 **variation, may be discussed.** (emphasis added)

32 **WAC 197-11-560 FEIS response to comments**

(e) Explain why the comments do not warrant further agency response,
citing the sources, authorities, or reasons that support the agency's response
and, if appropriate, indicate those circumstances that would trigger agency
reappraisal or further response.

1 **WAC 197-11-704 Action**

2 (1) "Actions" include, *as further specified below*:

3 (a) New and continuing activities (including projects and programs) entirely or
4 partly financed, assisted, conducted, regulated, licensed, or approved by
5 agencies;

6 (b) New or revised agency rules, regulations, plans, policies, or procedures;
7 and

8 (c) Legislative proposals.

9 (2) Actions fall within one of two categories:

10 (a) **Project actions.** A project action involves a decision on a specific project,
11 such as a construction or management activity located in a defined
12 geographic area. Projects include and are limited to agency decisions to:

13 (i) License, fund, or undertake any activity that will directly modify the
14 environment, whether the activity will be conducted by the agency, an
15 applicant, or under contract.

16 (ii) Purchase, sell, lease, transfer, or exchange natural resources, including
17 publicly owned land, whether or not the environment is directly modified.

18 (b) **Nonproject actions.** Nonproject actions involve decisions on policies,
19 plans, or programs.

20 (i) The adoption or amendment of legislation, ordinances, rules, or
21 regulations that contain standards controlling use or modification of the
22 environment;

23 (ii) **The adoption or amendment of comprehensive land use plans or
24 zoning ordinances;**

25 (iii) The adoption of any policy, plan, or program that will govern the
26 development of a series of connected actions (WAC [197-11-060](#)), but not
27 including any policy, plan, or program for which approval must be obtained
28 from any federal agency prior to implementation; (emphasis added)

29 **WAC 197-11-776 Phased Review**

30 "Phased review" means the coverage of general matters in broader
31 environmental documents, with **subsequent narrower documents**
32 **concentrating solely on the issues specific to the later analysis** (WAC
197-11-060(5)). Phased review may be used for a single proposal or EIS
(WAC 197-11-060). (emphasis added)

1 **Position of the Parties**

2 Petitioners assert the City's FSEIS failed to disclose and erroneously denied that
3 stormwater from the rezoned Trillium property would have probable significant
4 environmental impacts by increasing peak and base flows thereby flooding Chambers
5 Ditch.²¹ The City overlooked the cumulative increase in peak flows from the Trillium
6 development as well as new and existing developments in the area.²² Petitioners claim
7 the City's FSEIS statement that "flooding should not increase" is at odds with the City's
8 Planning Commission and Hearing Examiner which recommended splitting the Trillium
9 property into two zones and limiting impervious surface.²³ Petitioners claim the effect of
10 rezoning the Trillium property from Neighborhood Village to Residential 4-8 /Acre will
11 have probable significant environmental impacts such as erosion, water pollution, harm
12 to fish and aquatic life, and flooding septic systems.²⁴ Petitioners also argue the FSEIS
13 did not impose explicit conditions on the Trillium property, such as technical studies of
14 development impacts and proposals for reasonable mitigation requirements.²⁵ Without
15 technical studies on the Trillium property, the City Council did not have sufficient
16 information to make reasoned choices among zoning alternatives.²⁶ The City should be
17 directed by the Board to address such deficiencies in the FSEIS.²⁷

18
19
20 The City argues the Petitioners failed to cite any GMA or SEPA violations in their
21 brief and on this basis alone, the Petition should be dismissed.²⁸ Next, the City argues
22 Petitioners failed to prove the downzone will have specific environmental impacts
23 because the City did not adopt a specific and actual development proposal for the
24 property, rather it was a zoning change.²⁹ The City argues the downzone has less
25 environmental impact than the former zoning because density will be reduced from
26 Neighborhood Village (Residential 7-13 /Acre, plus a commercial area with 85%
27
28

29 ²¹ Petitioners' Prehearing Brief at 11 and 13.

30 ²² *Id.* at 12.

31 ²³ *Id.* at 14 and Petitioners' Ex. 37.

32 ²⁴ *Id.* at 15.

²⁵ *Id.* 16-17.

²⁶ *Id.* at 18.

²⁷ *Id.* at 19.

²⁸ City of Olympia Prehearing Brief at 10.

²⁹ *Id.* 10-11.

1 impervious surface) to Residential 4-8 /Acre with 50 to 55% impervious surface
2 coverage, no commercial areas, and if townhomes are built only 70% impervious
3 surface coverage.³⁰ The City asserts Petitioners have not proven that stormwater and
4 other environmental impacts from the downzone will be significant throughout the entire
5 Chambers Basin. Without documentation showing the water velocities, stormwater
6 mitigation or other technical details from an actual development proposal, the
7 Petitioners cannot prove the extent of the impacts.³¹ At this time, the City cannot impose
8 restrictions or mitigation requirements on the property until a proposal is submitted.
9

10 The City argues its SEPA review and conclusions were appropriate because the
11 stormwater impacts will be addressed at the time the property is developed. At the time
12 of a specific development proposal, the City will apply its stormwater manual standards,
13 conduct a SEPA process to address drainage issues and use the state-wide
14 Subdivision Act³² requiring appropriate provisions for drainage.³³ A remand by the
15 Board to the City to complete further SEPA studies is not warranted because Petitioners
16 have not proven the FSEIS for the downzone is inadequate or incomplete.³⁴
17

18 Intervenor supports the City's arguments on Issue 1 and Issues 3-5 by
19 emphasizing that Petitioners did not make sufficient legal arguments or brief the issues
20 using statutory citations. Instead Petitioners speculated on theoretical impacts from a
21 development; those arguments should be raised after a specific development is
22 proposed.³⁵ Intervenor argues Petitioner cannot claim a non-project proposal must have
23 detailed environmental review because the Board has decided in *Reading*³⁶ that a non-
24 project plan need only analyze environmental impacts at a generalized level of detail.³⁷
25

26 In reply, Petitioners argue a downzone does not prevent assessing
27 environmental impacts to the affected property. Referencing *Chuckanut Conservancy*
28

29 ³⁰ *Id.* at 11.

30 ³¹ *Id.* at 12-13.

31 ³² RCW 58.17.110(1) and (2).

32 ³³ *Id.* at 13-14.

33 ³⁴ *Id.* at 14.

34 ³⁵ Intervenor DR Horton's Prehearing Brief at 7.

35 ³⁶ *Reading v. Thurston County and City of Olympia*, Case # 94-2-0019, Final Order and Decision (March 6, 1995) at 8.

36 ³⁷ *Id.* at 8-10.

1 v. *Washington State Department of Natural Resources*,³⁸ Petitioners argue the actual
2 physical environment that exists at the time of the downzone must be properly assessed
3 through SEPA and assessed for a theoretical proposal for future development. They
4 also argue the Neighborhood Village zone no longer exists as it is not viable due to
5 traffic impacts and several other changes have occurred to the area since 1994 when
6 the property was zoned Neighborhood Village. Thus, the FSEIS does not account for
7 these changes.³⁹

8
9 Petitioners make the following additional arguments: they emphasize the “rule of
10 reason” still applies to a non-project action and requires a “reasonably thorough
11 discussion of . . . probable environmental consequences.”⁴⁰ Petitioners highlight the
12 need for a thorough FSEIS discussion about downstream flooding. Without more
13 information, the City is left with “false assurances” about impacts of stormwater and the
14 inability of pipes and infrastructure to manage the stormwater.⁴¹

15 16 17 **Board Analysis and Discussion**

18 The State Environmental Policy Act requires all government agencies to consider
19 the environmental effects of a proposed action, together with alternatives to the
20 proposed action.⁴² The Supreme Court has referred to SEPA as an environmental full
21 disclosure law. SEPA requires agencies to identify, analyze, disclose, and consider
22 mitigation of impacts on both the natural and built environments resulting from a
23 proposed action. The disclosure of environmental impact information to the City’s
24 decision makers and to the public promotes the policy of fully informed decision making
25 by government bodies and better opportunities for meaningful public participation.⁴³

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30 ³⁸ *Chuckanut Conservancy v. Washington State Dept. of Natural Resources*, 156 Wash. App. 274, 290, 232
P.3d 1154 (2010).

31 ³⁹ Petitioners’ Joint Reply Brief at 3.

32 ⁴⁰ *Id.* at 5.

⁴¹ *Id.* at 7-12.

⁴² RCW 43.21C.030(2).

⁴³ RCW 43.21C.030; RCW 36.70A.035; *Norway Hill Preservation & Protection Assn. v. King County*, 87 Wn.2d
267 (1976).

1 Thus, when a city amends its Comprehensive Plan or changes zoning, a detailed
2 and comprehensive SEPA environmental review is required.⁴⁴ SEPA is to function “as
3 an environmental full disclosure law,”⁴⁵ and the City must demonstrate environmental
4 impacts were considered in a manner sufficient to show “compliance with the procedural
5 requirements of SEPA.”⁴⁶ Although the City decision is afforded substantial weight,⁴⁷
6 environmental documents prepared under SEPA require the consideration of
7 “environmental” impacts with attention to impacts that are likely, not merely
8 speculative,⁴⁸ and “shall carefully consider the range of probable impacts, including
9 short-term and long-term effects.”⁴⁹

11 In *King County v. Washington State Boundary Review Board for King County*, the
12 Supreme Court recognized the purpose of SEPA is “to provide consideration of
13 environmental factors at the earliest possible stage to allow decisions to be based on
14 complete disclosure of environmental consequences,”⁵⁰ and SEPA is to provide
15 agencies with environmental information *prior to making decisions, not after they are*
16 *made.*⁵¹

18 The Hearings Board has been consistent in their decisions that agencies must
19 evaluate environmental impacts of non-project actions up-front and not wait until the
20 project level. The Western Board, in *Better Brinnon Coalition v. Jefferson County*, stated
21 (emphasis added):⁵²

23 SEPA does not require the County to evaluate a laundry list of unrelated
24 environmental considerations, but it does require that the County evaluate
25 probable significant environmental impacts. WAC 197-11-402(1). **Simply**
26 **providing, as Jefferson County has, that any impacts will be addressed**
27 **on a permit basis fails to assess the cumulative impacts and to fully**

28 ⁴⁴ WAC 197-11-704(b)(ii).

29 ⁴⁵ *Moss v. Bellingham*, 109 Wn. App. 6 (2001).

30 ⁴⁶ *Sisley v. San Juan County*, 89 Wn.2d 78, 64, 569 P.2d 712 (1977).

31 ⁴⁷ RCW 43.21C.090.

32 ⁴⁸ WAC 197-11-060(4)(a).

⁴⁹ WAC 197-11-060(4)(c).

⁵⁰ *King County v. Washington State Boundary Review Board for King County*, 122 Wn.2d 648, 664, 860 P.2d 1024 (1993). See also, *Lasilla v. Wenatchee*, 89 Wn.2d 804 (1978).

⁵¹ *Id.*

⁵² *Better Brinnon Coalition v. Jefferson County*, CPSGMHB Case No. 03-2-0007, Amended FDO (Nov. 3, 2003).

1 **inform the decision makers of the potential consequences of the**
2 **designations challenged here.**

3 In another Western Board case, *Whidbey Environmental Action Council v. Island*
4 *County*,⁵³ the Board's decision paralleled the facts of this case (emphasis added):

5 The [environmental] impacts that must be considered for this non-project
6 action are the impacts that are allowed by virtue of the change in designation
7 itself. While project level impacts may properly be deferred to the permitting
8 stage, the **County must evaluate the impacts allowed under the changed**
9 **designation at the time of that non-project action.**

10 WAC 197-11-228 states "[t]he process of integrating SEPA and GMA should begin at
11 the **early** stages of plan development." One purpose of an integrated GMA document (see
12 WAC 197-11-235) is to ensure that studies conducted **early** in the planning and
13 environmental analysis process are available and useful throughout the planning and
14 analysis process (see WAC 197-11-230(2) and 197-11-235). Although early planning
15 documents and environmental analyses such as documents on concepts or plan elements
16 may serve specific purposes and are not each required to be comprehensive in scope, they
17 should explain their relationship to the overall GMA/SEPA process that is underway and
18 identify how cumulative impacts are being considered. Consistent with WAC 197-11-
19 228(c)⁵⁴ the City's FSEIS for the rezone proposal is in keeping with the requirement for early
20 planning and evaluation of the natural environment, and especially in this case, stormwater
21 and water quality.
22

23
24 In reviewing the FSEIS, the Board finds the City adequately evaluated environmental
25 impacts of the proposed rezone, including alternatives and cumulative impacts. To begin
26 with, the FSEIS includes references to extensive reports and evaluations conducted from
27 2006 and 2008 on stormwater and flooding in the Chambers Basin.⁵⁵ In 2006, the City
28 imposed a building moratorium throughout the area of the rezoned property. By 2008, the
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31 ⁵³ *Whidbey Environmental Action Council v. Island County*, CPSGMHB Case No. 03-2-0008, FDO (August 25,
32 2003).

⁵⁴ WAC 197-11-228(c). "The process of integrating SEPA and GMA should begin at the early stages of plan
 development."

⁵⁵ Respondent's Prehearing Brief, Ex. 9 "Final Supplemental Environmental Impact Statement" (FSEIS) at 25
 and 30-31.

1 City had evaluated "the conditions of topography, soils, groundwater, and surface drainage;
2 and the existing land use, zoning and actual development potential given this combination of
3 physical constraints"⁵⁶ in the Chambers Basin.⁵⁷ The City's Moratorium Evaluation Report
4 "summarizes the technical and policy evaluation of the interrelated groundwater and
5 stormwater problems in a portion of Chambers Basin and their implications for future land
6 use development."⁵⁸ One of the major conclusions was that the area was ". . . not
7 developable at current zoned densities because of the high groundwater and flat
8 topography. Conventional stormwater ponds would take up much of the developable area.
9 Individual homes could be at risk of flooding."⁵⁹ The rezone proposal appears to begin to
10 address this concern by downzoning some property in the Basin.
11

12 In regards to the natural environment and water, the FSEIS describes the existing
13 condition of the site with forested areas, wetlands, a prominent ridgeline separating the
14 property into distinct areas. The FSEIS presents four zoning alternatives to be considered
15 by the City in accordance with WAC 197-11-442(2).⁶⁰ Impervious surface impacts from R-4,
16 R4-8, R 6-12 and Neighborhood Village zones are analyzed in Table 1 and placed into
17 context of the 2006 moratorium and 2008 evaluation report.⁶¹ In addition, the FSEIS
18 summarizes comments from the public such as suggestions for additional zones. Three
19 zones were described as not applicable in accordance with the City's code.⁶² In the section
20 on water, the City addresses mitigation as required in WAC 197-11-440(6). The City's
21 rezone proposal is defined under WAC 197-11-774 as a non-project proposal which is
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26 ⁵⁶ *Id.* at 30 referencing "The Final Chambers Basin Moratorium Evaluation Report" Ch. 3 at 14 (2008).

27 ⁵⁷ *Id.* at 31.

28 ⁵⁸ The Final Chambers Basin Moratorium Evaluation Report, March 2008, Summary at 5.

29 ⁵⁹ *Id.*

30 ⁶⁰ WAC 197-11-442. "(2) The lead agency shall discuss impacts and alternatives in the level of detail
31 appropriate to the scope of the nonproject proposal and to the level of planning for the proposal. Alternatives
32 should be emphasized. In particular, agencies are encouraged to describe the proposal in terms of alternative
means of accomplishing a stated objective (see WAC 197-11-060(3)). Alternatives including the proposed
action should be analyzed at a roughly comparable level of detail, sufficient to evaluate their comparative
merits (this does not require devoting the same number of pages in an EIS to each alternative)."

⁶¹ *Id.* at 30

⁶² Respondent's Prehearing Brief, Ex. 9; FSEIS at 27. Other zones mentioned by the public, but not analyzed
were: Residential Low Impact; Residential 4 in Chambers Basin; and Split Zoning.

1 “broader than a single site specific project, such as plans, policies, and programs.”⁶³ The
2 FSEIS states that because this is a non-project proposal, “mitigation measures were not
3 necessary at this time.”⁶⁴

4 However, the FSEIS correctly addresses a future site-specific proposal with the
5 following: “Any development proposal for the site should include an offsite downstream
6 analysis that identifies the most serious of these offsite problems, and proposes specific
7 mitigation measures.”⁶⁵ The FSEIS continues elaborating on the need to use existing
8 stormwater regulations to mitigate impacts of development and acknowledges present and
9 future “flooding in the Chambers Ditch that can be linked to existing infrastructure
10 deficiencies and lack of maintenance; a similar link has not been established to potential
11 development at the Trillium site.”⁶⁶

12 In other aspects of the FSEIS, the City addressed SEPA requirements. For example,
13 in the built environment section, similar to the natural environment section, the FSEIS
14 describes existing conditions and the impacts to housing and residential uses if R 6-12, R4-
15 8 or R-4 zoning were selected. This section is followed by a discussion about mitigation
16 measures regarding transportation, design review, and tree preservation requirements.
17 Finally, the FSEIS presents summaries of public testimony and comments from the County
18 regarding stormwater runoff, flooding, schools, land use and neighborhood character,
19 plants, animals, transportation and overall SEPA observations. The FSEIS includes City
20 responses to these comments and their factual corrections of information.⁶⁷

21 The Board further finds that Petitioners failed to come forward with scientific
22 evidence, environmental expert advice, or other environmental impact analyses showing
23 that the City’s FSEIS was inadequate in its disclosure of environmental effects or
24 reasonable alternatives to the proposed action. Petitioners failed to satisfy their burden to
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30 ⁶³ WAC 197-11-774. “‘Nonproject’ means actions which are different or broader than a single site specific
31 project, such as plans, policies, and programs (WAC 197-11-704).”

32 ⁶⁴ FSEIS at 33.

⁶⁵ Respondent’s Prehearing Brief, Ex. 9; FSEIS at 33.

⁶⁶ *Id.* at 33.

⁶⁷ *Id.* at 30, Table 1 “Allowed Building Coverage and Impervious Surface by Zoning District” and public and
County comments at 31-33.

1 show that the City's SEPA review process was clearly erroneous in view of the entire record
2 before the Board and in light of the goals and requirements of SEPA and the GMA.

3 Overall, the City followed requirements in WAC 197-11-442 which states "The lead
4 agency shall have more flexibility in preparing EISs on non-project proposals, because there
5 is normally **less detailed information available** on their environmental impacts and on any
6 subsequent project proposals." (emphasis added) Further, WAC 197-11-704 defines
7 actions and non-project actions. Here, the City made a decision to change their
8 comprehensive plan by downzoning the Trillium property and in doing so, the City followed
9 requirements for a "non-project action" governed by WAC 197-11-704(b)(ii).⁶⁸ Thus, the
10 Board finds and concludes the City complied with the requirements of SEPA for plan level
11 SEPA review.
12

13 Conclusion

14 In regards to Issue 1 and 3 through 5, the Board concludes Petitioners failed to carry
15 their burden of proof to demonstrate the City violated SEPA or GMA when it adopted
16 Ordinance No. 6824 and a Final Supplemental Environmental Impact Statement amending
17 the Comprehensive Plan, the Olympia Zoning Map and the Olympia Future Land Use Map
18 and changed the zoning from Neighborhood Village to Residential 4-8 units per acre.
19

20 Issue 6

21 Did the City of Olympia fail to coordinate and make the Comprehensive Plan
22 ("Comp. Plan") Amendment and Rezone consistent with the Thurston County
23 Comprehensive Plan, as required under 36.70A.100 RCW, by failing to
24 1) base the decision on land capability, environmental sensitivity, and
25 constraints in providing services; and
26 2) weigh the impact on sensitive critical areas and the possibility of
27 creating a public safety hazard?
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32 ⁶⁸ WAC 197-11-704(b)(ii)(b). "**Nonproject actions.** Nonproject actions involve decisions on policies, plans, or programs. (i) The adoption or amendment of legislation, ordinances, rules, or regulations that contain standards controlling use or modification of the environment; (ii) The adoption or amendment of comprehensive land use plans or zoning ordinances."

1 Issue 7

2 Did the City of Olympia fail to implement and comply with goals one, six,
3 nine, ten, and twelve of the Growth Management Act, RCW 36.70A.020(1),
4 (6), (9), (10), and (12), by

- 5 1. allowing development where adequate facilities to control stormwater
6 and prevent flooding, erosion, and pollution cannot be provided in an
7 efficient manner and will not likely exist at the time the development
8 becomes ready for occupancy;
9 2. arbitrarily and unreasonably infringing on the property rights of nearby
10 landowners by increasing flooding, erosion, and pollution; and
11 3. failing to adequately protect the environment in the vicinity of
Chamber's Ditch by increasing flooding, erosion, and pollution
through improper zoning?

12 Issue 8

13 Does the Comprehensive Plan Amendment and Rezone violate RCW
14 36.70A.070 because it is inconsistent with, inter alia, Olympia Municipal
15 Code ("OMC") 18.32.100(C), (D), (E), (F), (H), (I) and (J), City
16 Comprehensive Plan Goals LU 1, ENV 3, 4, PF 21, 22, Comprehensive Plan
17 policies LU 1.1, 1.2, ENV 3.4, 3.7, 3.8, 3.12, 4.2, 5.1, 5.5, 7.2, 7.5, PF 21.1,
18 and 22.1 by failing to:

- 19 1) minimize damage to downstream properties due to erosion and
flooding;
20 2) minimize harm to fish-bearing streams and associated wildlife habitat
21 and to protect them from erosion and water quality degradation;
22 3) reduce the frequency and severity of flooding;
23 4) reduce the rate of expansion of impervious surfaces in the city; and
24 5) designate a sensitive drainage basin for low-impact development?

25 Applicable Law

26 **RCW 36.70A.020 Planning goals.**

27 The following goals are adopted to guide the development and adoption of
28 comprehensive plans and development regulations of those counties and
29 cities that are required or choose to plan under RCW 36.70A.040. The
30 following goals are not listed in order of priority and shall be used exclusively
31 for the purpose of guiding the development of comprehensive plans and
32 development regulations:

- (1) Urban growth. Encourage development in urban areas where adequate
public facilities and services exist or can be provided in an efficient manner.

1 . . .

2 (6) Property rights. Private property shall not be taken for public use without
3 just compensation having been made. The property rights of landowners
4 shall be protected from arbitrary and discriminatory actions.

5 . . .

6
7 (9) Open space and recreation. Retain open space, enhance recreational
8 opportunities, conserve fish and wildlife habitat, increase access to natural
9 resource lands and water, and develop parks and recreation facilities.

10 . . .

11
12 (12) Public facilities and services. Ensure that those public facilities and
13 services necessary to support development shall be adequate to serve the
14 development at the time the development is available for occupancy and use
15 without decreasing current service levels below locally established minimum
16 standards.

17 **RCW 36.70A.070 Comprehensive plans — Mandatory elements.**

18 The comprehensive plan of a county or city that is required or chooses to
19 plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive
20 text covering objectives, principles, and standards used to develop the
21 comprehensive plan. **The plan shall be an internally consistent document**
22 and all elements shall be consistent with the future land use map. A
23 comprehensive plan shall be adopted and amended with public participation
24 as provided in RCW 36.70A.140. (emphasis added)

25 **RCW 36.70A.100 Comprehensive plans — Must be coordinated.**

26 The comprehensive plan of each county or city that is adopted pursuant to
27 RCW 36.70A.040 shall be coordinated with, and consistent with, the
28 comprehensive plans adopted pursuant to RCW 36.70A.040 of other
29 counties or cities with which the county or city has, in part, common borders
30 or related regional issues.

31 **RCW 36.70.130 Comprehensive Plans - Review procedures/schedules –**
32 **Amendments**

(d) Any amendment of or revision to a comprehensive land use plan shall
conform to this chapter. Any amendment of or revision to development
regulations shall be consistent with and implement the comprehensive plan.

1 **Positions of the Parties**

2 For Issue 6, Petitioners argue RCW 36.70A.100 is violated because the “probable
3 outcome” of the rezone is inconsistent with Goal 2 of Thurston County’s Comprehensive
4 Plan which states: “Provide for stormwater management in a manner that protects
5 environmental quality.” Petitioners conclude Comprehensive Plan Goal 2 is diametrically
6 opposed to a rezone which “creates a probability of a significant increase to peak flows and
7 flooding. . . .”⁶⁹
8

9 In Issue 7, Petitioners state the City failed to implement GMA goals from RCW
10 36.70A.020 by allowing development where facilities cannot be efficiently provided to
11 control stormwater and prevent flooding (GMA Goals 1 and 12). The City has not made
12 provisions to enlarge a ditch to receive increased stormwater; thus, the rezone will
13 “encourage development in an urban area where adequate facilities do not exist.”⁷⁰ Further,
14 the City’s action impinges on property rights of those whose land will be flooded (GMA Goal
15 6), fails to retain open space (Goal 9) and fails to protect the environment (GMA Goal 10)
16 because “it is probable that the rezone will significantly increase peak flows and flooding.”⁷¹
17

18 Petitioners’ Issue 8 alleges a violation of RCW 36.70A.070, stating in their brief that
19 “The plan shall be an internally consistent document and all elements shall be consistent
20 with the future land use map.”⁷² They argue there are inconsistencies between the City’s
21 Comprehensive Plan Goals, Policies and municipal codes and they will be “directly and
22 significantly undermined by a rezone that causes significant flooding, erosion and
23 pollution.”⁷³ Further, Petitioners assert that when the City rezoned the property and failed to
24 place “protective conditions to study the impact and mitigation prior to development, the
25 City’s determination of consistency between those goals/policies and the rezone must be
26 viewed as *clearly erroneous*.”⁷⁴
27
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31 ⁶⁹ Petitioners’ Prehearing Brief at 20-21.

32 ⁷⁰ *Id.* at 22.

⁷¹ *Id.* at 23.

⁷² *Id.* at 24.

⁷³ *Id.* at 25.

⁷⁴ *Id.* at 25.

1 The City's response to Issue 6 is as follows. The City argues Petitioners have not
2 cited a case where a city's comprehensive plan amendment must specifically comply with a
3 county's comprehensive plan. Rather, it is the City's position that it has met RCW
4 36.70A.100 because the City and County have participated in joint comprehensive planning
5 and adopted Countywide Planning Policies.⁷⁵ Furthermore, the City's rezoned density is
6 now the same as the County's property immediately adjacent to the Trillium property, thus
7 making the zones consistent between the City and County.
8

9 In regards to the GMA Goals addressed in Issue 7, the City responds that the goals
10 are not hierarchically ordered and for several reasons the goals do not determine a specific
11 outcome. The legislature entrusted the local jurisdictions to decide how to implement the
12 goals and the goals provide a framework to guide more specific requirements of the GMA.⁷⁶
13 The Petitioners, according to the City, have not proven the rezone will create more
14 stormwater because the former zoning of Neighborhood Village would have greater
15 environmental impacts than the downzone. As with the City's arguments for Issues 1 and 3
16 through 5, the City will address downstream impacts when it reviews a specific development
17 proposal for the Trillium property.
18

19 For Issue 7, Intervenor contend that Petitioners' fears about future development are
20 speculative and do not "demonstrate a violation of the GMA goals."⁷⁷ Regarding Issues 6
21 and 8, Intervenor argues Petitioners' assumptions about increased stormwater and
22 environmental impacts cannot be sustained if the rezone allows a lower density than
23 previously zoned and eliminates commercial uses of the property.⁷⁸ Intervenor incorporates
24 the City's arguments in its brief.
25
26

27 **Board Analysis and Discussion**

28 The Board does not find the Petitioners arguments sufficient to meet its burden of
29 proof to establish the City violated GMA goals or violated RCW 36.70A.100. In Issue 6,
30 Petitioner alleges a violation of RCW 36.70A.100, but only provides conclusory statements
31

32 ⁷⁵ Respondent's Prehearing Brief at 16-17.

⁷⁶ Id. at 17.

⁷⁷ Intervenor DR Horton's Prehearing Brief at 14.

⁷⁸ Id. at 14-15.

1 that it is “probable” that the Trillium zoning will significantly increase flooding and
2 environmental impacts.⁷⁹ They further argue these impacts are thus inconsistent and
3 incompatible with the County’s comprehensive plan. However, Petitioners have not
4 demonstrated specific outcomes from development on the property because no detailed
5 development plan has been submitted. The Board finds the Petitioners have failed to prove
6 an inconsistency between the City’s and the County’s comprehensive plan.
7

8 For Issue 7, the Petitioners argue GMA goals were violated by the rezone. But
9 again, as with Issue 6, Petitioners do not provide evidence that flooding and increased
10 stormwater will occur with the rezone. Their conclusions are based on concerns that the
11 City, County, and the Diking District have not and do not maintain a drainage ditch and the
12 overall stormwater system is not properly managed. These concerns do not, in and of
13 themselves, lead to a violation of the GMA. The Board observes in the Petitioners’
14 arguments much frustration and concern over local jurisdictions’ inability to resolve
15 stormwater problems, but a GMA appeal of the rezone is not the proper avenue to resolve
16 the disputes.
17

18 Similarly for Issue 8, Petitioners allege violations of RCW 36.70A.070, but Petitioners
19 did not cite RCW 36.70A.130. The preamble of that statute requires comprehensive plans to
20 be internally consistent. Comprehensive plans are “generalized coordinated land use policy
21 statement(s)”⁸⁰ On the other hand, the rezone considered in this matter primarily constituted
22 a change in density, an amendment of development regulations. The latter are the “controls
23 placed on development or land use activities . . . including . . . zoning ordinances”⁸¹
24 The argument presented by the Petitioners clearly expresses concern regarding
25 inconsistencies but the inconsistencies the Petitioners address are “external.” That is the
26 inconsistencies, if any exist, are between the Comprehensive Plan and the development
27 regulations. Any such inconsistency would constitute a violation of RCW 36.70A.130. The
28 Petitioners are unable to meet their burden of proof to establish a violation of RCW
29 36.70A.070.
30
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⁷⁹ Petitioners’ Prehearing Brief at 20.

⁸⁰ RCW 36.70A.030(4).

⁸¹ RCW 36.70A.030(7).

1 **Conclusion**

2 In regards to Issue 6, 7 and 8, the Board concludes the Petitioners failed to carry
3 their burden of proof to demonstrate the City's adoption of Ordinance No. 6824 violated
4 RCW 36.70A.020 (1),(6),(9),(10) and (12); RCW 36.70A.070; or RCW 36.70A.100.

5 **ORDER**

6 Based on the foregoing, the Board makes the following Order. The Board having
7 concluded that Petitioners failed to demonstrate that Ordinance 6824 was clearly erroneous
8 and violated Chapter 36.70A RCW, the Growth Management Act or Chapter 43.21C, The
9 State Environmental Policy Act, this appeal is denied and Case No. 13-2-0014 is **CLOSED**.

10
11
12 Dated this 7th day of August, 2013.
13
14
15

16 _____
17 Nina Carter, Board Member

18
19 _____,
20 William Roehl, Board Member

21
22 _____
23 Raymond L. Paolella, Board Member
24

25 **Note: This is a final decision and order of the Growth Management Hearings Board**
26 **issued pursuant to RCW 36.70A.300.⁸²**
27
28
29
30

31 ⁸² Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
32 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.
A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent
upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings
Board is not authorized to provide legal advice.